

## 48A C.J.S. Judges § 147

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### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VI. Authority, Powers, and Duties

#### B. Administrative Powers and Duties

§ 147. Generally; administrative judges—Limitations on powers

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#### West's Key Number Digest

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**Provisions granting executive power within the judiciary to an administrative judge do not confer upon the judge the power to interfere with the judicial function or to control judicial discretion in any particular case.**

Provisions granting executive power within the judiciary to an administrative judge do not confer upon the judge the power to interfere with the judicial function or to control judicial discretion in any particular case.<sup>1</sup> Thus, for example, because the authority to grant a continuance is within the discretion and power of each judge, an administrative order of a chief district judge requiring the grant of a continuance in certain cases exceeds the chief judge's authority to prepare rules to expedite and facilitate the business of the court.<sup>2</sup>

By contrast, a chief judge does not act beyond the purview of administrative authority or preempt a trial judge's discretion where the chief judge merely suggests to the trial judge that the judge

reevaluate an initial proposal for a change of venue and take into consideration the potentially unnecessary costs and possible adverse publicity in making a change of venue in the case.<sup>3</sup>

### ***Power to sentence.***

The presiding judge of a municipal court has the authority to set schedules, make rules of court, assign duties, and generally administratively run the court,<sup>4</sup> but the presiding judge does not have the authority to establish an administrative policy requiring that he alone preside over the sentencing docket and sentence all evaluated offenders or to establish a policy prohibiting other municipal court judges from sentencing certain kinds of offenders.<sup>5</sup>

### ***Substantive rights of potential litigants.***

An administrative judge's order requiring all judicial officers and judges in certain districts to refrain from issuing any arrest warrant, under a particular section of the open records act, to any individual except the attorney general, or the district attorney or solicitor general acting in their official capacities, exceeds the scope of the judge's powers where, in issuing such order, the judge is interpreting the open records act in a manner that would affect the substantive rights of potential litigants.<sup>6</sup>

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## Footnotes

- 1 W. Va.—*State ex rel. Skinner v. Dostert*, 166 W. Va. 743, 278 S.E.2d 624 (1981).  
**Judicial decisions of other judges**  
Although a presiding judge has administrative supervisory authority over other judges in a superior court, there is no increase in the judicial power or authority of such judge so as to give him or her authority to overrule judicial decisions made by other judges.  
*Ariz.—Arpaio v. Davis*, 221 Ariz. 116, 210 P.3d 1287 (Ct. App. Div. 12009).  
**Backfire or cross-warrants**  
A circuit court judge, in the capacity as administrative head of the circuit court, has no lawful authority to issue an instruction to a magistrate to refrain from issuance of "backfire" or "cross-warrants" in criminal proceedings because such a rule invades the magistrate's judicial functions.  
*W. Va.—Matter of Greene*, 173 W. Va. 406, 317 S.E.2d 169 (1984).
- 2 Ky.—*Brutley v. Com.*, 967 S.W.2d 20 (Ky. 1998).
- 3 Ill.—*People v. Sutherland*, 155 Ill. 2d 1, 182 Ill. Dec. 577, 610 N.E.2d 1 (1992).

- 4 N.M.—*Sims v. Ryan*, 1998-NMSC-019, 125 N.M. 357, 961 P.2d 782 (1998).
- 5 N.M.—*Sims v. Ryan*, 1998-NMSC-019, 125 N.M. 357, 961 P.2d 782 (1998).
- 6 Ga.—*Jersawitz v. Eldridge*, 262 Ga. 19, 413 S.E.2d 725 (1992).

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